

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT IFAKARA
CRIMINAL SESSION NO. 05 OF 2021
REPUBLIC
VERSUS
LEONARD BUNDALA MALULANYA @ RENA NGASA

RULING
(ON TRIAL WITHIN TRIAL)

Hearing date: 18/2/2022

Ruling date: 18/02/2022

NGWEMBE, J:

In the cause of hearing the 4th prosecution witness, F 8620 D/CPL Mkama who is a police officer stationed at Ulanga District at Mahenge, testified forcefully that on 30/06/2020 while in his station, he recorded an additional caution statement of the accused. He proceeded to identify the same and prayed to tender it as part of his evidence.

The defense counsel stood up firmly objecting admissibility of that additional statement, hence this court being guided by section 27 of the Evidence Act Cap 6 R.E. 2019 together with many precedents thereto, decided to conduct mini trial.

It is an imperative requirement that the assessors should retire throughout the conduct of mini trial with a view to avoid being possibly prejudiced by hearing of the evidence which might afterwards be held inadmissible. This position was rightly discussed and decided in many cases including the case of **Ngwala Kija Vs. R, Criminal Appeal No. 233 of 2015** (CAT at Tabora).

The purpose of trial within a trial is to find truth of the matter in dispute. In other words, the accused herein repudiated the additional statement that he never made on 30th June, 2020. In order to satisfy the legal requirements of how such additional statement was made, the trial court is duty bound to conduct trial within a trial in order to allow parties to be heard.

Since this is a min trial, wise assessors siting in the main trial were ordered to retire and go outside the court room during the whole process of trial within a trial.

Briefly, the accused objected admissibility of additional statement alleged to have made on 30th June 2020, while the main statement made on 6th January, 2020 was admitted in this court marked exhibit P5. According to the prosecution witness Mr. Mkama in this mini-trial, testified confidently that on 30/6/2020, the accused appeared before the District Court of Ulanga for mention, thus when he met with Mr. Mkama an investigator and one who recorded his main statement. In the cause, the accused disclosed the fact that in the whole incidence of killing the deceased, he was alone.

Neither Khamis Shimba nor anyone else was involved therein. As such out of his free will he decided to record his additional statement.

Following that additional statement, Khamis Shimba and others were released by *Nolle prosequere* due to absence of concrete and reliable evidences against them.

In turn the defense witness, who is for the accused, stood firm to repudiate any involvement of recording an additional statement on 30/6/2020. However, he admitted to have been taken from the District Court of Ulanga to Police station, where he met Mr. Khamis Shimba therein. That he identified him for he was his brother and prior to the event he was living in his house. Further repudiated even the finger print in that statement that is not his fingers.

With deep consideration of this mini trial, I find important to be guided by the reasoning of the Justices of Appeal in the case of **Amiri Ramadhani Vs. R, Criminal Appeal No. 228 of 2005** whereby Justice Mroso JA deeply held that repudiation of statement, be it, main or additional statement mean to deny ever to have made it. Once the maker denies to have made any statement, means repudiation of its form and contents. In this case the accused denies even the finger print put in the additional statement.



In the circumstances of this case, there is one door which may help this court to arrive into its conclusion, and that door is the similarity of the contents of the said additional statement with the main statement. Undisputedly, the main statement indicates that the maker was alone when

he went to collect sesame from the deceased house. Also, he did not mention another person on how he transported them to the market place at Dar es Salaam and the amount he sold. The same contents are found in the additional statement.

Above all, though this court is not an expert of finger prints, yet may find similarities therein.

Moreover, I have calmly, considered the evidences testified by both sides, both agree that on 30/6/2020 the accused after court session went to Police Station and he met with Mr. Khamis Shimba. However, he repudiates to have made any additional statement therein. Such evidence is defeated by the prosecution evidence which proved that in fact the accused instead of going back to prison after court session, went to Police Station to make additional statement.

I would therefore, safely conclude that the additional statement was made by the accused voluntarily with free will expressing exactly what he did on the fateful date and thereafter. I therefore, overrule the objection and proceed to admit the additional caution statement made by the accused before police on 30/6/2020 as an exhibit marked P6 forming part of this proceedings.

It is so ordered.

Date at Ifakara in Kilombero District this 18th February, 2022.



P.J. NGWEMBE

JUDGE

18/02/2022